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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/510,572 02/22/00 ARMSTRONG

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QM12/0213

EXAMINER

Brad A. Armstrong
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Paradise CA 95967

PARADISO, J	
ART UNIT	PAPER NUMBER

3721

DATE MAILED:

02/13/01

2

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/510,572

Applicant(s)

ARMSTRONG, BRAD A.

Examiner

John R. Paradiso

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim "8" has been renumbered as claim - - 11- - .

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 3, 7, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2 line 5, claim 3 lines 5 and 6, claim 7 line 5, and claim 8 lines 5 and 6, "slowly" and "low" are relative terms which renders the claim indefinite. The terms are not specifically defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-14 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over INOUE ET AL (US 5,207,426) in view of ASHER (US 5,689,285). (Note that misnumbered claim "8" has been renumbered and is being considered here as renumbered claim - - 11 - -.)

INOUE ET AL discloses a controller (10), a method of using a controller, and inherently, a method of manufacturing a controller of the type held in two hands which is used for controlling computer imagery. A plurality of depressible surfaces (12, 13), including a dome-capped on/off switch, are pressed by the user and in turn press upon electricity-manipulating devices (121-123, 133-134) and microcircuitry to generate signals which are then output to the computer for use in controlling video game imagery. (See INOUE ET AL columns 3-7 and figures 1, 3, and 6.)

INOUE ET AL does not disclose the electricity-manipulating devices as being pressure-sensitive analog sensors in order to provide an analog signal so that a user can control the computer imagery action in proportion to the intensity of force used on the controls.

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ASHER discloses a controller and a method of use and manufacture of a controller for controlling computer video game imagery in which pressure-sensitive analog sensors in the controller produce analog signals that are proportional to the force applied to the controls. The signal is output to the computer and moves the screen imagery faster or slower in proportion to the amount of force exerted on the controller. (See ASHER columns 5-7 and figure 4.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use pressure-sensitive analog sensors to produce a force-proportional analog signal, as taught by ASHER, in the invention of INOUE ET AL in order to provide a more natural, intuitive feel for the controller.

Regarding claims 3-5 and 8-10, while the combination of INOUE ET AL and ASHER does not specifically disclose the use of the controls for controlling either the jumping height of a game character, the speed of a game car, or the firing rate of a game gun, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the combination of INOUE ET AL and ASHER to control any or all of these things, since these controlled on-screen images are art-equivalents in the gaming art and the selection of any of these known equivalents to be controlled by the controller of INOUE ET AL and ASHER would be within the level of ordinary skill in the art.

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Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 15-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,102,802. Although the conflicting claims are not identical, they are not patentably distinct from each other because the sensing of an on/off condition is well known in the electrical art and it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of U.S. Patent No. 6,102,802 to provide the claimed on/off indication in order to provide the user more detailed and useful feedback.

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Allowable Subject Matter

8. As explained above, a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b). If the provisional rejection of claims 15-19 is thus overcome, then claims 15-19 will be allowable and a statement of reasons for indicating claims 15-19 as allowable follows:

9. The following is a statement of reasons for the indication of allowable subject matter: the prior art could not alone or in combination anticipate or make obvious a control device using sensors made from pressure-sensitive variable-conductance material to create an analog output proportional to varying physical pressure applied to the sensor.

Reference Citations

10. The following prior art made of record and not relied upon is considered pertinent to Applicant's disclosure:

- O'MARA ET AL (US 5510812) discloses a pressure-sensitive sensor.
- RUTLEDGE ET AL (US 5764219) discloses a pressure-sensitive sensor.

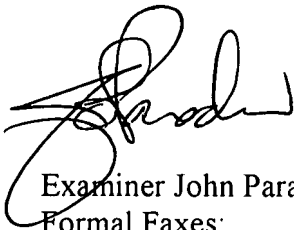
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Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 8:30 a.m. – 5:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center receptionist.



Examiner John Paradiso (703) 308-2825
Formal Faxes: (703) 305-3579/80
Supervisor Peter Vo (703) 308-1789
Receptionist (703) 308-1148

February 12, 2001